

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed July 7, 2004 ("Office Action"). At the time of the Office Action, Claims 1-32 were pending in the application. In the Office Action, the Examiner rejects Claims 1-32. Applicants amend Claims 1, 9, 12, and 20. Applicants respectfully request reconsideration and favorable action in this case.

Objections to the Drawings and Specification

The Examiner objects to the drawings and Specification because there is a brief description of Figure 12 on page 5 of the Specification but there is no Figure 12 included in the drawings. Conversely, the Examiner points out that the drawings include a Figure 12A but there is not a brief description of Figure 12A on page 5 of the Specification. Applicants appreciate the Examiner's attention to this discrepancy. Applicants have amended page 5 of the Specification such that the "Brief Description of the Drawings" now includes a description of Figure 12A. Applicants respectfully request that the objections to the drawings and Specification be withdrawn.

Section 112 Rejections

The Examiner rejects Claims 1-10, 12, 20, and 24 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Although it appears that the Examiner intended to provide Applicants with a description of why each of Claims 1-10, 12, 20, and 24 were rejected by the Examiner as being indefinite, such a description has been omitted. (Office Action, pages 3-4). Regardless, Applicants have reviewed the claims to try to identify items in the claims that the Examiner may have identified as lacking antecedent basis. As a result, Applicants have amended Claims 1, 9, 12, and 20 but were unable to identify any antecedent basis problems in Claim 24. Accordingly, Applicants submit that Claims 1-10, 12, 20, and 24 are in accordance with 35 U.S.C. § 112, second paragraph. Applicants respectfully request that these rejections now be withdrawn and the claims allowed.

Section 101 Rejections

The Examiner rejects Claims 1-10 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Specifically, the Examiner states that the claims "lack any recitation of technology in the body of the claims." (Office Action, page 4). Although Applicants believe that all previously pending claims recite statutory subject matter under § 101, to advance this case expeditiously to issuance, Applicants have amended independent Claim 1 to recite technology in the body of the claim. For at least these reasons, Applicants respectfully request that the rejection of the Claims 1-10 under § 101 be withdrawn and the claims allowed.

Section 102 Rejections

The Examiner rejects Claims 1-3, 6-12, 14, and 16-32 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,397,197 B1 issued to Gindlesperger ("*Gindlesperger*"). Applicants respectfully traverse these rejections for the reasons stated below.

Independent Claim 1, as amended, recites as follows:

An electronic bidding system, comprising:
means for enabling each of a plurality of vendors to submit electronic vendor bids on at least two parameters associated with a product, the electronic vendor bids submitted over an electronic communications network;
means for calculating a total cost of the product to a purchaser for each vendor in response to the vendors bids, the total cost taking into account the at least two parameters associated with the product; and
means for outputting each of the vendors bids and the total cost of the product to the purchaser.

In order to establish a *prima facie* case of anticipation, all the elements of the claimed invention must be found within a single prior art reference. *Dewey & Almy Chemical Co. v. Mimex*, 124 F.2d 986, 52 U.S.P.Q. 138 (2d Cir. 1942). In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim." *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); M.P.E.P. §

2131 (*emphasis added*). Applicants respectfully submit that *Gindlesperger* does not disclose, teach, or suggest each and every element of independent Claim 1.

For example, *Gindlesperger* does not disclose, teach, or suggest a "means for enabling each of a plurality of vendors to submit electronic vendor bids on at least two parameters associated with a product," as recited in Applicants' Claim 21. Rather, *Gindlesperger* merely discloses a bidding system "for selecting the lowest bidder from the database's represented vendor pool on a per-job basis." (Column 1, lines 12-13). The *Gindlesperger* system maintains "a database of vendor records, each record identifying a vendor, one or more buyers who approves the vendor for receipt of invitations to bid, and a vendor capability data representing production and economic capabilities of the vendor." (Abstract). Thus, at the onset, the buyer identifies a list of vendor who the buyer is willing to purchase a product or service from at any given time, and this list is stored in the database. When a buyer wishes to receive bids on a product, the buyer's sends an invitation-for-bid describing the product or service that the buyer wishes to procure. (Column 5, lines 2-4). The server system "extract[s] a vendor selection criteria data from the buyer's invitation-for-bid." (Column 5, lines 5-6). The vendor selection criteria "[defines] the values that a vendor's capability data must meet to qualify for, and to receive, a vendor's invitation-for-bid, requesting a bid response corresponding to the buyer's invitation-for-bid." (Column 5, lines 6-10).

Upon receiving the buyer's invitation-for-bid, the *Gindlesperger* server "compares and correlates the vendor selection criteria data [contained in the invitation] to the vendor capability data field of each vendor data record in the buyer's vendor pool database." (Column 5, lines 11-14). Thus, the buyer's criteria is compared against the capabilities of each vendor (as stored in the database) and the pool of eligible vendors is narrowed. The *Gindlesperger* server then "transmits a vendor's invitation-for-bid data to each vendor in the buyer's vendor pool whose vendor capability data field meets the vendor selection criteria data extracted from the buyer's invitation-for-bid data." (Column 5, lines 14-18). As such, invitations-for-bids are sent only to those vendors who met the buyer's criteria, as discussed above. Next, the *Gindlesperger* server receives bids from the invited vendors. (Column 5, lines 18-22). Regarding the content of the vendor bids, *Gindlesperger* only discloses that "each [bid] represents the transmitting vendor's price for the particular . . . goods or services

requested.” (Column 5, lines 22-24). There is no disclosure in *Gindlesperger* that the vendors submit bids “on at least two parameters associated with a product,” as recited in Applicants’ Claim 1. In fact, *Gindlesperger* further discloses that “by employing the invention, the print *buyer sets the parameters* for both vendor pool selection and for the bidding and award process.” (Column 9, lines 46-48). Because the *Gindlesperger* server narrows the pool of eligible vendors to receive invitations-for-bids prior to the invitations being sent (and certainly prior to the vendors bids being transmitted), “vendor quality and responsibility is determined at the time each vendor pool is established and only the responsiveness of each vendor’s bid is reviewed at the time of award.” (Column 9, lines 48-52). As a result, the buyer need only consider the vendor price in the vendor’s bid, and the award is given to the vendor having the “lowest represented vendor price.” (Column 5, lines 24-27). Accordingly, Applicants respectfully submit that *Gindlesperger* does not disclose, teach, or suggest a “means for enabling each of a plurality of vendors to submit electronic vendor bids on at least two parameters associated with a product,” as recited in Applicants’ Claim 1.

As another, example, Applicants respectfully submit that *Gindlesperger* does not disclose, teach, or suggest a “means for calculating a total cost of the product to a purchaser for each vendor in response to the vendors bids, the total cost taking into account the at least two parameters associated with the product,” as recited in Applicants’ Claim 1. As described above, the *Gindlesperger* server merely receives each vendor bid, which “represent[s] the transmitting vendor’s price for the particular . . . goods or services requested.” (Column 5, lines 22-24). Upon receiving bids from the plurality of vendors “to whom a vendor invitation-for-bid data was transmitted,” the *Gindlesperger* server “then selects the responding bid data having the lowest represented vendor price and generates information identifying the buyer of the identity of the selected vendor.” (Column 5, lines 21-27.) Thus, the *Gindlesperger* server merely considers the vendor prices submitted in the plurality of bids, picks the lowest, and transmits the identity of the lowest bidder to the buyer. Upon receiving the buyer’s approval of the vendor, the *Gindlesperger* server transmits “the identity of the selected vendor and the rank order value of the bid data submitted by all other selection pool vendors” to each non-selected vendor.” (Column 5, lines 28-35). As a result, the non-selected vendors can determine how their bids compared to the other bidding

vendors. By disclosing that the vendor bids are awarded to the “bid having the lowest represented vendor price,” however, *Gindlesperger* certainly cannot be said to disclose, teach, or suggest a “means for calculating a total cost of the product to a purchaser for each vendor in response to the vendors bids, the total cost taking into account the at least two parameters associated with the product,” as recited in Applicants’ Claim 1.

For at least these reasons, Applicants respectfully requests reconsideration and allowance of Claim 1, together with Claims 2-10 that depend from Claim 1.

The Examiner also relies on *Gindlesperger* to reject independent Claims 11 and 25. Applicants respectfully submit that *Gindlesperger* does not disclose, teach, or suggest each and every element of Applicants’ independent Claims 11 and 25. For example, Claim 11 recites “software stored on the computer readable storage medium and operable to receive bids from a plurality of vendors, each bid comprising a plurality of parameters associated with at least one product, calculate the total cost of the at least one product to a purchaser for each vendor in response to the vendors' bids, the total cost taking into account the plurality of parameters associated with the at least one product, and output each of the vendors bids and the total cost of the product to the purchaser.” Claim 25 recites “receiving bids from a plurality of vendors, each bid comprising a plurality of parameters associated with at least one product, calculating, using a computer, the total cost of the at least one product to a purchaser for each vendor in response to the vendors' bids, the total cost taking into account the plurality of parameters associated with the at least one product, and outputting, using the computer, each of the vendors bids and the total cost of the product to the purchaser.” Thus, for reasons similar to those discussed above with regard to Claim 1, Applicants respectfully submit that *Gindlesperger* does not disclose, teach, or suggest each and every element as set forth in Applicants' independent Claims 11 and 25.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 11 and 25, together with Claims 12-24 and 26-32 that depend from Claims 11 and 25, respectively.

Section 103 Rejections

The Examiner rejects Claims 4-5, 13, and 15 under 35 U.S.C. § 103(a) as being unpatentable over *Gindlesperger* as applied to Claims 1, 11, and 25 above, and further in view of U.S. Patent No. 3,573,747 issued to Adams et al. (“*Adams*”).

Dependent Claims 4-5 depend upon independent Claim 1, which Applicants have shown above to be allowable. Dependent Claims 13 and 15 depend from independent Claim 11, which Applicants have shown above to be allowable. Accordingly, dependent Claims 4-5, 13, and 15 are not obvious over the proposed combination at least because they include the limitations of their respective independent claims. Additionally, dependent Claims 4-5, 13, and 15 recite elements that further distinguish the art. Because Applicants have shown independent Claims 1 and 11 to be allowable, however, Applicants have not provided detailed arguments with respect to dependent Claims 4-5, 13, and 15. However, Applicants remain ready to do so if it becomes appropriate. For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 4-5, 13, and 15.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other reasons clear and apparent, Applicants respectfully request reconsideration and allowance of the pending claims.

Although Applicants believe that no fees are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicants invite the Examiner to contact its attorney at (214) 953-6595.

Respectfully submitted,
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